



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE823

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crabs; Application for Exempted Fishing Permit, 2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Director, Office of Sustainable Fisheries, has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories (Limuli) of Cape May Court House, NJ, contains all the required information and warrants further consideration. The application seeks harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve) for biomedical purposes and requires, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Technical Committee and Delaware Bay Ecosystem Technical Committee were consulted on the scientific merits of the application. The Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Commission's Horseshoe Crab Interstate Fisheries Management Plan. Therefore, NMFS announces that the Director proposes to recommend that an EFP be issued that

would allow up to two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Reserve.

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Written comments on this action must be received on or before [*insert date 20 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0113, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0113, Click the “Comment Now!” icon, complete the required fields Enter or attach your comments.

Mail: Written comments should be sent to Chris Wright, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13464, Silver Spring, MD 20910.

Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal."

Fax: Comments may also be sent via fax to (301) 713-0596.

FOR FURTHER INFORMATION CONTACT: Chris Wright, Office of Sustainable Fisheries, (301) 427-8570.

SUPPLEMENTARY INFORMATION:

Background

Limuli submitted an application for an EFP dated April 26, 2016, to collect up to 10,000 horseshoe crabs for biomedical and data collection purposes from the Reserve. Of the collected horseshoe crabs, a portion will be tagged and analyzed for data collection purposes. All collected horseshoe crabs will be returned to the sea after they are bled. The applicant has applied for a similar EFP every year from 2001-2015. Permits were issued each year from 2001-2013, however no harvest and data collection occurred in years 2008, 2009, and 2012. Permits were not issued in 2014 or 2015 due to the pending listing under the Endangered Species Act (ESA) of the rufa red knot (*Calidris canutus rufa*) and ultimate determination as threatened species status under the ESA of 1973 (December 11, 2014; 79 FR 73706) and time needed to consult under the Endangered Species Act with U.S. Fish and Wildlife Service (FWS).

Limuli Laboratories EFP Application

The current EFP application specifies that: 1) the same methods in the 2001-2013 EFPs would be used, 2) at least 15 percent of the bled horseshoe crabs would be tagged, and 3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli would provide morphological data on horseshoe crab catch, would tag a portion of the caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

Limuli last harvested horseshoe crabs from the reserve in 2013. The results of that collection were summarized in a **Federal Register** Notice relating to Limuli's 2015 EFP application on October 7, 2015 (80 FR 60633).

Horseshoe Crab Technical Committee and Delaware Bay Ecosystem Technical Committee Consultation and Review

NMFS consulted with the Commission's Horseshoe Crab Technical Committee and Delaware Bay Ecosystem Technical Committee via conference call on June 8 and July 11, 2016, asking members comment on the utility of the data collected under the past EFPs.

The Technical Committees had varying opinions on the overall quality of the data from the EFP. Technical Committees members pointed out that the EFP data was some of the only data on horseshoe crabs from the reserve, and that the data was included in past scientific papers. Most members believed that the collection of the data was at least generally useful, and many suggested that the data should be further considered as part of the 2018 benchmark stock assessment for horseshoe crabs. The meetings summaries are available upon request (see **ADDRESSES**).

ESA Consultations

On August 5, 2014, NMFS completed an intra-agency consultation under section 7 of the ESA for proposed approval of an EFP to allow the biomedical harvest of horseshoe crabs from the Reserve which determined that the proposed action is not likely to adversely affect any listed species under our jurisdiction. The consultation covers the years from 2014-2018.

NMFS started to conference with FWS in May 2016 on starting the consultation under section 7 of the ESA for rufa red knot, because this species had no previous consultation. The consultation is ongoing and NMFS intends to conclude the consultation before making a final decision on the merits of the EFP application.

Past EFP Conditions and Requirements

Limuli Laboratories proposes to conduct an exempted fishery operation in 2016 using the same means, methods, and seasons proposed/utilized during the EFPs in 2001-2013. In past EFPs, NMFS required that the following conditions and requirements be met for issuance of the EFP:

1. The permit must be carried on board the vessel named.
2. A State of New Jersey Division of Fish and Wildlife (NJDFW) supplied observer must be taken when requested to do so by the New Jersey Bureau of Marine Fisheries.
3. When fishing under the permit in the Reserve during the participation period specified above, the vessel:
 - a. must use a 5 and 1/2 inch mesh flounder trawl net;
 - b. must not exceed 30 minutes during any one tow (measured from the time trawl doors enter the water until they are removed from the water per 50 CFR 223.206(d)(3)(i));
 - c. must notify State of New Jersey Law Enforcement daily of when and where the collection will take place;
 - d. must abide by any other federal fishery regulation in effect in the Reserve;

- e. must withdraw from this exempted fishery before enrolling or participating in any other exempted fishery.
- 4. The following species may be possessed by the vessel when fishing under this permit with the specified trawl gear during the participation period above:
Horseshoe Crab.
- 5. The fishing vessel that is issued a permit to conduct this experimental fishing activity may not possess or land catch in excess of a combined total of 500 horseshoe crabs per day during the participation period.
- 6. The fishing vessel that is issued a permit to conduct this experimental fishing activity may not possess or land in excess of a combined total of 10,000 horseshoe crabs from the Reserve during the participation period.
- 7. Participant must return all captured horseshoe crabs to waters adjacent to those from which they were captured as soon as possible after blood collection.
- 8. Participant must supply to National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission (Commission), and the NJDFW, one month after the end of the participation period, the following data on all horseshoe crabs bled for biomedical purposes:
 - a. sex ratio; and
 - b. daily numbers of horseshoe crabs caught.
- 9. Participant must tag 15 percent of all horseshoe crabs bled for biomedical purposes, and supply to NMFS, the Commission, and NJDFW, one month after the end of the participation period, data on horseshoe crabs tagged, released, and recaptured.

10. Participant must supply to NMFS, the Commission, and the NJDFW, one month after the end of the participation period, the following data on a minimum of 200 randomly selected crabs tagged:

- a. morphometric data, by sex, e.g. interocular distance and weight; and
- b. levels of activity, as measured by a horseshoe crab struggles after being placed on a weighing scale or by distance traveled after release on beach.

The EFP exempted two commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f), which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

Proposed Modifications for the 2016 EFP

Conditions and requirements may be added or amended prior to the issuance of the EFP or on an annual basis. NMFS is considering modifying past terms and conditions on the permit to possibly include or modify harvest, data collection and reporting requirements.

A final decision on issuance of the EFP will depend on NMFS' review of public

comments received on the application, an ESA consultation with the FWS, and a determination that the EFP is consistent with all applicable laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2016.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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